

Bigfork Land Use Advisory Committee  
Minutes of August 29, 2013  
Bethany Lutheran Church

Committee members present: Shelley Gonzales, John Bourquin, Joyce Mitchell, Susan Johnson, Al Johnson, James Bonser and Secretary Gwen Sutherland

Also present were 21 members of the public. Bailey Minnich was present from the Planning Department.

Vice Chairwoman Mitchell called the meeting to order at 4:05 p.m.

A motion was made to adopt the Agenda. (m/sc: Bourquin/Bonser/unanimous)

The minutes of the July 27, 2013 meeting were approved with 3 corrections as follows:

1. Page 1, Staff Report, Line 3: delete "R-3 and B-3 zoning".
2. Page 4, Public Comment/Paul Mutascio/20<sup>th</sup> entry: delete "elected officials" and insert "zoning regulations for wind turbines".
3. Page 5, C: delete "a committee member" and insert "4 voting members".

A motion was made to approve the minutes with the corrections above. (m/sc: Gonzales/Bourquin/unanimous)

ADMINISTRATOR'S REPORT:

- A. Sign-in Sheet: Reminder to the public of the availability of BLUAC minutes and Agenda are available via email and are posted on the Flathead County Planning Office website [www.flathead.mt.gov](http://www.flathead.mt.gov)
- B. There were no applications to the posted opening for the Member-at-Large position.

PUBLIC COMMENT:

Nancy Idler: Questioning the public access to Flathead Lake off of Holt Drive, the rock pillars, and the no trespass signage. Bailey Minnich of Planning and Zoning offered information on the permitting process and approvals for that development by Sortino.

Pat Molen: Asked if that is now a private island.

Caleb Soptelean: The Bigfork Eagle has reported that survey work is being done to identify the public easement to the lake. There are now markers delineating the easement and there is a potential for public parking nearby.

Elsa Putzier: Asked if the regulations and permits for the development of the land/lakeshore by Sortino have been obtained.

John Bourquin: Asked if a committee for developing policy on wind turbines had been established per B.J. Grieve's statement that one would be established at the July 27<sup>th</sup> BLUAC meeting. Bailey Minnich replied that a committee has not been established.

APPLICATIONS:

- A. FCU-13-07 Swan Junction, Inc. A request by Anthony Welzenback, on behalf of Swan Junction, Inc. for a Conditional Use Permit to have multiple principal uses within one building in the Bigfork Zoning District, zoned B-3 (Community Business). The applicant is proposing an 11 room hotel,

casino and art gallery in addition to the previously permitted restaurant on approximately 1 acre. The property is located at 5 Swan Way near Bigfork.

#### STAFF REPORT:

Bailey Minnich, Flathead County Planning & Zoning Department, presented the Staff Report. The request for a Conditional Use Permit is to allow for multiple uses in one building which is not permitted in B-3 zoning. Bailey provided the Committee with three letters received by the Planning and Zoning Department related to this application. All three letters were opposed to the Conditional Use Permit based on hours of operation, traffic congestion/safety and noise. She also provided the Committee with a modified Draft Findings of Facts #13, redefining "Community Decay" and Draft Condition #14, removing the reference to Flathead Ordinance #6, Control of Community Decay.

Staff presented multiple issues with the Findings of Fact:

1. Required parking based on the proposed uses requires 55 spaces. The submitted map only has 52 spaces, plus a 5 foot landscape buffer is required based on the zoning requirement. If parking cannot be reconfigured to meet the required 55 spaces, other parking areas must be created. Conditions # 4 through 7.
2. Regarding sewer, water and storm water requirements that were required in 12-20-06, all documents must be acquired from the related districts. Conditions# 8 through 9.
3. An environmental review by the Health Department and Bigfork Water and Sewer District must be conducted. Conditions # 8 through 9.
4. Department of Revenue approved a liquor license for this property for 2006/2007. Montana Code Annotated has a 3 point test for license approval which the license applicant (Thomas J. Strizich, not the property owner but the lessee for the bar) was in compliance on all 3 tests.
5. Regarding Community Decay, Staff modified the language in Finding of Fact #13, as stated above.
6. Regarding the increase in traffic based on the expanded business of the applicant, Staff indicated that traffic reports indicated there are 10,248 annual/daily vehicle trips in that area. The additional trips related to the proposed use would increase by 785 trips or an increase of 7.6%.
7. Staff addressed the issue of inappropriate hours of operation. All proposed uses within the single building will be within legal tavern hours and consistent with other similar business types.

Q: Member A. Johnson: Stated that the prior Conditional Use Permit (FCU-04-31) was only approved for a restaurant and tavern. Al asked for Staff to comment on the 10/06/04 approval letter, item #2, which stated that the permittee had one year to implement the use per the approved Conditional Use Permit. A. Staff. If the business was opened for only one day, then the Conditional Use Permit continues with the property. Al: The liquor license was not granted for another year. A. Staff, as long as the applicant tries to get all the conditions in place, the conditions are in compliance.

Q; Member A. Johnson: Did the applicant obtain all the required permits? When where the permits issued? A. Staff. In 2009, Planning and Zoning began tracking Conditional Use Permits for compliance with conditions imposed on the permits. Planning and Zoning does not have compliance tracking prior to 2010.

Q: Member Gonzales: The address of the holder for the liquor license (11 Swan Way) does not match the address of the subject applicant's Montana Club (5 Swan Way), but it is the same address of a different business, Buzz'n Bagels (11 Swan Way). A. Staff: Yes, there are discrepancies.

APPLICANT REPORT:

Anthony Welzenbach stated that his business was there before Crossroads Church and admitted that the property needs to be cleaned up. He stated that the esthetics of the property is subjective despite comments that it is an eyesore.

Q: Member Gonzales: Questioned the discrepancy in the address of the liquor license and the two businesses on Swan Way.

Q: Member A. Johnson: The liquor license is in the name of Thomas J. Strizich. Who is that? A: Welzenbach. Strizich is a lessee in the Montana Club. By definition the tavern is open as it has a liquor inventory.

Q: Member Bonser: The original Conditional Use Permit was issued in October 2004. When were plans submitted to the Building and Fire Inspecting Departments? There is no legal hooded exhaust system, no fryer or oven for the permitted restaurant. What was the permitted occupancy number for the restaurant? A: Welzenbach. I don't know when plans were submitted. New plans will be submitted to establish occupancy.

Q: Member Bonser: The building was originally on a septic system then was hooked up to Bigfork Water and Sewer. Was a grease trap installed and connected. A: Welzenbach. It is not plumbed in.

Comment Bonser: The Conditional Use Permit was issued but the conditions were never followed for compliance.

Q: Member Bonser: Parking analysis indicates the requirement of 55 spaces but only 52 can be created. What will be the fire suppression system for the building and the basement hotel? A: Welzenbach. I won't look at that until the Conditional Use Permit is approved.

Q: Member Bonser: Based on the Staff report, at full occupancy there will 159 people in the building, parking adequacy is not being met. A: Welzenbach. Parking space numbers are based on the square footage of the building.

Q: Member Gonzales: The Staff report said to achieve 55 parking spaces one of the two property's accesses would need to be converted to parking. Would having only one access for ingress and egress be a safety problem? A: Welzenbach. No.

Q: Member A. Johnson: What is the square feet of the lower level (basement) of the building for the hotel? A: Welzenbach. It is approximately 6,000 square feet.

Q: Member A. Johnson: Is this property for sale? A: Welzenbach. Possibly.

Q: Member A. Johnson: The interior roads are maintained by the tenants, correct? A: Welzenbach. Yes.

Q: Member A. Johnson: The Conditional Use Permit will require you to use a private garbage hauler as commercial businesses cannot use the County "green cans". A: Welzenbach. I will comply with the Conditional Use Permit.

Q: Member A. Johnson: Have you complied with storm water mitigation? A: Welzenbach. Yes, there are buffer areas, directional flow, and a drywell in the middle of the parking lot with an approximate 5 foot cylinder.

Q: Member Mitchell: Is it your intent to open this property as presented? A: Welzenbach. I would love to see the building completed but I might not have the energy or money to finish the project.

Q: Member Bourquin: Condition #18 of the Staff report states that the Planning and Zoning Department will confirm compliance with the conditions of the Conditional Use Permit. A: Staff. Since 2012, her department has been doing compliance inspections.

Q: Member Bourquin: Condition #14 of the Staff report, do boats, crane equipment, iron and junk vehicles constitute decay? A: Staff: Condition #14 will be reworded (example was handed to each BLUAC member) removing reference to the Decay Ordinance, but specifically stating that the piles of wood, iron and junk vehicles must be removed from public view.

Comment: Member A. Johnson: The property is an incredible eyesore. I am concerned about the property condition. A boat has been on the public access with a "for sale" sign, plus a flatbed trailer and crane. One side of the building is not sided. I am not confident the property will be cleaned up. There will be a 5 foot landscaping buffer required yet there is a large area of uncut weeds. I request a condition that no objects (boats, junk equipment, vehicles) be displayed or stored in front of the business or that can be seen from the road. Property cannot be used as a sales/storage lot. Reply: Welzenbach. I agree, the items need to be removed, but there are other areas in Bigfork that have trash.

Q: Member Gonzales: The decay condition should not be a part of the Conditional Use Permit application. If there is a Decay Ordinance violation it should be dealt with now not in 12 months after the permit is issued. A: Staff. No formal complaints have been filed. A form needs to be filled out.

Comment: Member Gonzales. People have been complaining for years.

Comment: Member Bourquin: If someone complained now it would be addressed quicker?

Comment: Member A. Johnson: Warned of legal problems that might arise by filing a complaint.

Q: Member Gonzales: In past applications for restaurant/bar/casino uses, the applications included a floor plan showing kitchen, bar and gaming machines. Why are there no plans? A: Staff. There is a plan for parking based on the size of each unit. This is a review of the use and access, and as we have no building department. Plans are not required.

#### PUBLIC AGENCIES:

Julie Spenser, Bigfork Water and Sewer District, stated that at present there is no need for a grease trap as the restaurant is non-operating. A grease trap would be required for the restaurant to operate.

#### PUBLIC COMMENT:

Lee White-presented a power point pictorial of the property showing the large crane, the "yard sale" area, the "woodpile, propane tank and water heater" area, multiple storage areas (trailer and boats) and weeds. A picture showed the signage and commented that it advertised services that were not permitted under the initial Conditional Use Permit. Additional pictures showed the adjacent business is clean and tidy. A picture showed an open electrical meter and he commented that at the adjacent church children play in that area and it is a safety problem. He pointed out that the Little Brown Church and its cemetery is also close by. He asked BLUAC not to recommend the application.

Lee White and Carole James, representing the Northshore Homeowner's Association, stated that they were not in favor of the approval of the Conditional Use Permit. Also stated, that if approved, they hoped the County would be responsible for follow up for compliance on the conditions of the permit.

Mel Haug, Assistant Pastor, Crossroads Christian Church. He stated that safety is his biggest concern with the proposed permitted uses. The church has over 400 members and the church is used daily, day and night, and his concern is the additional traffic on the rear access road, which they both use, will be a detriment to the safety of the church's members.

Member Bonser asked about the existence of a fence between the church and the applicant property. Mr. Haug replied there is a fence but the road is shared and he is concerned about the safety of the church's members and children.

Patricia Meyers, owner Buzz N Bagels, stated that the applicant is her business neighbor and she is in favor of the Conditional Use Permit.

Nancy Idler stated that the two churches are in use but both Montana Club and Grizzly Jacks are defunct.

Craig Wagner stated that the County has been overly kind in stating the applicant's property is in a state of decay. He stated that the DEQ needs to look at the tank with a hose hanging out of it to see if there is any hazardous material in it. He stated that there is an existing corporation with the name of Montana Club; two business entities cannot have the same name. He pointed out that the arrow on the highway sign is neon. He stated that the building is two-story and asked if it was ADA compliant. He asked if the Bigfork Water and Sewer District can handle the increase of 159 people at the business.

Randy Passons, Pastor, Crossroads Christian Church. He stated that he is strongly opposed to the application. He cited the potential increased traffic on the back road which the church also uses and the present visual impact of the subject property. He is opposed to the casino. He expressed concerns for the safety of the women and children of his congregation.

Carol James stated she does not like seeing a tavern and casino so close to two churches and a cemetery. She likes the building but not the junk equipment. Nothing has been done to improve the condition of the property for 6 years. She questioned the validity of issuing a Conditional Use Permit to enhance the property's value for sale.

Florence White asked who is in charge of clean up of the property and who has authority to clean it up? She stated that she wants to be sure this will not happen again.

#### APPLICANT'S RESPONSE TO PUBLIC COMMENT:

Welzenbach state that he trademarked the name Montana Club. Regarding the community decay, he stated he is committed to clean it up, move out the equipment and clear the weeds. He questioned the moral judgment of the public's comments. He stated there will be no loud music and this will be a full service business. Regarding safety and traffic flow, he recognizes the concerns of the church but stated the church adds more to traffic than the proposed 55 parking spaces at his property. He stated that the safety of children is important but he sees no risk for children from his business. He stated he is proud of his building and its proposed uses. He said the building is sound and the decay issue will be taken care of, possibly as early as this weekend.

COMMENTS BY STAFF:

Minnich indicated in support of the proposed conditions, there is additional documentation which is available, upon request, at the Planning and Zoning Department. She stated that the traffic count analysis was based on traffic on highway 35. There is no data on the property's back access road to evaluate so no assumptions could be made regarding increase in traffic and safety. The liquor license is valid as all three MCA test criteria were met. Regarding signage, zoning regulates the size of signs not what they say or, as in this case, if the services offered are permitted under the existing Conditional Use Permit.

BOARD DISCUSSION:

Member Bourquin: The building looks good but one side is not finished. I have no problem with the Conditional Use Permit, however, the lot and junked vehicles should have been cleaned up as a show of good faith. Wish we didn't need to wait a whole year to see if it gets cleaned up.

Q: Member A. Johnson to Staff: The existing Conditional Use Permit allows for a restaurant and tavern. If the Conditional Use Permit is denied then there could not be a hotel, casino or art gallery?

Staff reply: Correct

Member A. Johnson: I see no reason to deny. I feel Welzenbach has heard the message on decay.

Member Bonser: Regarding Condition #18, I like that the County will follow up. He stated concerns about hotel occupancy, adequate ingress and egress, but is in favor as long as the property is code compliant.

Member S. Johnson: Stated she wished the property was not such a visual detriment.

Member Gonzales: Stated that the Findings of Fact were acceptable but would oppose any changes to the conditions.

Member Mitchell: Stated she was not in favor of an additional year to attempt to clean up the property. She further stated that the marketability of the property and development of the property would likely need a new owner.

A motion was made to adopt Findings of Fact on FCU-13-07, (m/sc: Bonser/A. Johnson/unanimous)

A motion was made to recommend approval of FCU-13-07, (m/sc: S. Johnson/A. Johnson) Approve: Bonser, A. Johnson, S. Johnson. Deny Bourquin, Gonzales, Mitchell

FCU-13-07 will be forwarded to the Board of Adjustment without a recommendation.

OLD BUSINESS:

Bigfork Neighborhood Plan - New BLUAC Member Orientation postponed until such time that the Member-at-Large position is filled.

NEW BUSINESS:

None

A motion to adjourn was made (m/sc: Gonzales/Bonser). Meeting was adjourned at 6:35 p.m.

Respectfully submitted,  
Shelley Gonzales, Acting BLUAC Secretary

